SUPREME COURT, U. S.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~1374~~ 1146

JOHN E. RING,

Petitioner,

*v.*

JUNE STRELECKI, Director of Motor Vehicles, and STATE OF NEW JERSEY,

Respondents.

## PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

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JUNE STRELECKI, Director of Motor Vehicles, and STATE OF NEW JERSEY,

Respondents.

## PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

Petitioner, John E. Ring, prays that a writ of certiorari issue to review a final judgment of the Appellate Division of the Superior Court of the State of New Jersey.

The opinion of the Appellate Division dated March 8, 1967 has not been published. A copy is printed herein at page 17.

### Jurisdiction

The judgment of the Appellate Division sought to be reviewed was entered March 8, 1967. A petition for further review was denied by the Supreme Court of New Jersey May 2nd, 1967.

There has been no application for rehearing and no extension of time within which to file this petition.

The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1257 (C). Denial by the Supreme Court of the State of New Jersey of a petition for further review made the judgment of the Appellate Division a final judgment of the highest Court in New Jersey on which a decision can be had.

*American Railway Express* v. *Levee* (1923), 263 U. S. 19, 44 S. C. Rep. 11.

## Questions Presented for Review

1. Are the point system rule and the summary suspension order issued thereunder on June 27, 1966 summarily suspending petitioner's driver's license for three months without prior notice and hearing void as violations of the provisions relating to unreasonable seizure, double jeopardy, unusual punishments, due process and equal protection of the laws as provided in the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution?

2. Were the same provisions of the United States Constitution or any of them violated by the holding of the Appellate Division that any defect in the original summary suspension order was cured by the subsequent hearing in the Division of Motor Vehicles?

## Point System Regulation of New Jersey Division of Motor Vehicles

"Restoration after suspension or official warning * * * shall be with the express condition and understanding that conviction of any violation of the motor vehicle

laws of New Jersey or other states within a period of one year thereof may result in summary suspension of driving privileges, without hearing, for the follow-periods:

(a) When the violation occured within six months of the date of action—three months."

## Constitutional Provisions Involved

A review sought in this case involves due process and equal protection of the laws, double jeopardy, unreasonable seizure and unusual punishments under the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

## Statement of the Case

References are to exhibits in the appendix to the petitioner's brief in the Appellate Division, nine copies of which are submitted with this petition.

Petitioner, a resident of New Jersey, was fined $10 for a traffic violation in New York City in October, 1965.

Nine months later, on June 27, 1966, his New Jersey automobile driver's license was summarily suspended for three months without any hearing because of the above offense in New York (Ex. 1).

Petitioner, who earns his living as a truck driver, would lose over $1,200 in wages and he challenged the validity of the suspension under *Bechler* v. *Parsekian*, 36 N. J. 242 (1961), in which the N. J. Supreme Court said (p. 257):

> "In today's society a license to operate an automobile may be of vital significance and value to the licensee and may not be taken away except by due process."

The Division of Motor Vehicles advised that he could have a hearing and could drive in the meantime. However,

the suspension was put through without his knowledge and he was arrested and held in $300 bail for driving his truck while on the suspended list on July 9, 1966. Thereafter, the Division of Motor Vehicles set a hearing for July 27th, but ruled that the petitioner could not drive in the meantime (Ex. 4).

Upon receipt of such notice, petitioner filed a notice of appeal to the Appellate Division of the Superior Court July 27th on the ground that the suspension order was invalid because issued without and prior to a hearing (Ex. 5). Petitioner was in a dilemma because he needed his driver's license to make a living, and under Rule 4:88-14 he could not maintain the appeal to the Appellate Division unless all rights of administrative review had been exhausted. He attended the hearing on July 27th. No evidence was taken or offered by either party except an affidavit by petitioner (Ex. 8), which set forth the circumstances of the New York violation and which stated:

> "My attorney filed an appeal in the Appellate Division to preserve my claim that the order of revocation is void as a denial of due process because it was issued before a hearing as required,"

and:

> "I am attending this hearing July 27th to *reduce the suspension* and *regain my license* without waiving my claim that the suspension order was void. For the same reason I, in good faith, retained my license and surrender it herewith without waiving right of appeal."

Petitioner did not submit on the merits on the right to suspend and the affidavit stated:

> "A *hearing before suspension* would have shown that the New York violation was evidence that I was a careful driver and does not prove that I need to be re-

> formed now after nine months of subsequent safe driving,"

and urged that the order of suspension be rescinded and his license returned not on the merits but "as inadvertently issued" because issued without a hearing.

On August 19th the Appellate Division, after the hearing but before a decision thereon and after six weeks of suspension and loss of wages, stayed all proceedings pending final determination on the appeal (Ex. 9).

Notwithstanding the stay, the Division of Motor Vehicles on September 8th (Ex. 10) affirmed the three-month suspension by a letter which noted the stay, but its effect was a claim of six weeks more suspension if the appeal was lost. The letter of September 8th states:

> "Your petition for a reduction of the period of suspension is denied,"

showing clearly that both petitioner and Division of Motor Vehicles regarded the hearing as only a petition for reduction of suspension time in order to regain his license pending the appeal, a result which had already been accomplished by the Court's order staying the suspension.

Petitioner had forty-five days until October 23rd to file a notice of appeal from the September 8th letter of affirmance, if the affirmance was proper in view of the stay of proceedings. Petitioner did not file a second formal notice of appeal, but to avoid a charge that he did not avail himself of every opportunity to protect his rights, he did on October 19th, within the forty-five days, perfect an appeal by serving and filing in the Appellate Division a brief and an appendix record of all proceedings from the June 27, 1966 order of summary suspension up to and including the September 8, 1966 letter of affirmance, which included the petitioner's affidavit (Ex. 8), the only evidence offered by either party at the hearing.

On December 16th, three months after the September 8th decision and two months after the petitioner served and filed his brief and record, the respondent served on petitioner a notice and copy of documents purporting to be the record of proceedings under review. The documents included three prior equally illegal summary suspensions dated September 28, 1964, three months; October 23, 1964, extending the suspension to four months; and February 4, 1965, extending the suspension to ten months.

None of these three suspensions had been noted in the June 27, 1966 order of suspension now under review nor had they been noted or offered as evidence on the July 27th hearing.

On March 8, 1967 the Appellate Division affirmed the three-month suspension of June 27, 1966. It held that though the suspension order might have been void initially, any constitutional defects of lack of due process were cured by the subsequent so-called hearing of July 27th.

The Court refused to review the hearing record for the petitioner because he had not filed a second formal notice of appeal (p. 20).

The Court reviewed the record for the benefit of the respondent and held (p. 21):

> "There was sufficient substantial evidence to support the June 27th suspension,"

that evidence constituting four prior illegal summary suspensions not noted or offered in evidence at the hearing.

The five illegal suspensions would cause the petitioner to lose his license nearly eighteen months out of thirty-six months between August, 1963 and August, 1966, with a loss of about $9,000 wages out of a possible $18,000, and he is still subject to a further suspension of six weeks.

## How the Federal Questions Were Raised

The notice of appeal to the Appellate Division and the affidavit submitted to the Motor Vehicle Bureau at the July 27th hearing (Exs. 5 and 8) claim invalidity of the suspension for lack of a hearing. The opinion of the Appellate Division states (p. 18):

> "It was, and still is, Ring's position that the suspension was improper because it was ordered first without giving him a hearing."

Petitioner's brief in the Appellate Division raised defense of double jeopardy and other points.

All the constitutional questions were submitted to the Supreme Court of New Jersey in the same form as here submitted in the petition for certification for further review, which was denied May 2nd, 1967.

*Chicago B & Q Railway* v. *Chicago,* 166 U. S. 227, 17 S. C. Rep. 581.

## Reasons for Granting the Writ

### This Controversy Involves More Than a Single Suspension.

The public and the petitioner have an interest in a decision of this Court, which exists apart from the suspension under review. It is submitted that the evidence of four prior summary suspensions does not justify the present suspension, but shows a definite policy of the Division of Motor Vehicles of illegal seizure and to circumvent due process and equal protection of the laws.

Not only has the petitioner lost eighteen months and $9,000 wages without due process, but he is a truck driver who may drive 500 or 600 miles a week in different states and strange territories. Under the rule it is possible for him to be deprived of his license three out of every six

months for simple $10 traffic violations in other states as in this case, without ever a notice or hearing and without any help from the Courts of New Jersey.

Mass summary suspensions are now issued in New Jersey as a result of modern techniques and computers regardless of due process or of the circumstances. Few of the licensees can afford the expense of legal proceedings, or get the legal machinery to work before the suspension expires, in view of the opinion of the Appellate Division in this case that a hearing one month and a decision thereon within ten weeks after summary suspension is due process even where there is no imminent danger.

All these illegal summary suspensions on the driving record of the petitioner in the Division of Motor Vehicles have substantially increased his insurance premiums, though he has caused no personal or property damage.

This policy of issuing such summary suspensions tends to frustrate constitutional due process, and the lack of a ruling by this Court:

> "may effectively dispose of petitioner's rights and render entirely illusory his right to review here as well as his right to a hearing,"

*Liner* v. *Jafco* (1964), 375 U. S. 301, 306, 84 S. C. Rep. 391-394.

**The Suspension Order Is Invalid on Its Face.**

The opinion of the Appellate Division said (p. 20):

> "Ring filed no notice of appeal from the order made by the Division of Motor Vehicles on September 8, 1966 following the hearing. The only notice of appeal filed by him was that of July 25, 1966 which was addressed solely to the summary suspension order of June 27, 1966. Ring claimed that order was invalid because no hearing had been accorded him before it

was made. Therefore, the only appeal properly before us is that relating to the June 27, 1966 order which was issued without a hearing."

On that statement, the only record before the Appellate Division was the notice of appeal (Ex. 5) and the summary suspension order (Ex. 1), and the Appellate Division should have set it aside as invalid on its face, under *Armstrong* v. *Manzo* (1965), 380 U. S. 545, 85 S. C. Rep. 1187, which held that any deprivation of life, liberty or property must be *preceded* by notice and opportunity for hearing appropriate to the nature of the case.

## No Imminent Danger

This Court has sustained summary action where there is "imment danger," *Southern Railway Co.* v. *Virginia*, 290 U. S. 190, 54 S. C. Rep. 148.

There was no pretense of such showing here and such showing is precluded by the fact that the only possible evidence would be that of the police officer in New York who saw no imminent danger and issued a summons returnable several days later. The Division of Motor Vehicles took no action for nine months.

There was uncontradicted evidence that the petitioner (p. 19):

> "had driven several thousand miles during the eight months between the New York incident and the date of the suspension order without causing an accident and without having caused personal injury or property damage to anyone,"

and (p. 19):

> "had driven his truck from the right eastbound lane into the left eastbound lane because he intended to

> make a left turn at the intersection and deemed his driving maneuver compatible with safe driving."

Such a maneuver is neither dangerous nor illegal under New Jersey law which provides, NJS 39:4-88, that a licensee must drive in the right lane except when preparing to make a left turn.

The Appellate Division held there can be summary suspension (p. 23):

> "where in the administrative agency's judgment the protection of the public requires the immediate cessation of activities under the license."

An administrative officer may not be empowered, without notice or hearing, to act:

> "on his own opinion and ordain the taking of private property,"

and such an order or judgment:

> "without evidence is arbitrary and baseless,"

and is void:

> "if contrary to the undisputable character of the evidence,"

*Southern Railway Co.* v. *Virginia* (*supra*).

**The Subsequent "Hearing" Did Not Cure Constitutional Defects in the Suspension Order.**

The Appellate Division held that due process is satisfied with a hearing one month after summary suspension (p. 23) and a decision on the hearing six weeks later, and that such hearing cured any constitutional defects of denial of due process. In this case, the subsequent hearing was under the control of the Director of Motor Vehicles,

who was both prosecutor and judge, who formulated and is dedicated to the point system rule, and could not possibly consider the case objectively. The Director could hardly be expected to rule ten weeks after summary suspension, that there was no evidence or grounds for suspension in the first place, and such a ruling, if possible, would not provide compensation for lost wages.

As for loss of wages, the Appellate Division merely referred to pending legislation that would limit summary suspensions to non-occupational drivers. That would not help this petitioner and would no doubt violate the equal protection clause.

Administrative orders of a quasi judicial character are void:

> "if a hearing is denied; if granted was manifestly unfair,"

*Southern Railway Co.* v. *Virginia (supra).*

A hearing after summary suspension to show why the suspension should be set aside, or the period of suspension reduced, shifts the burden which may be decisive of the outcome and does not cure the defect of denial of due process.

Only by setting aside the order of summary suspension can "due process" be restored to the petitioner, *Armstrong* v. *Manzo* (*supra*).

**The Appellate Division Denied Due Process in Holding That There Was a Hearing But Refusing to Review Its Decision.**

Though petitioner did not file a second formal notice of appeal within forty-five days after the September 8th decision, he did perfect an appeal by filing a brief and record within that time, on October 19th, to avoid the charge that he failed to take every step to protect his rights. The

Court's refusal to review the hearing for the petitioner (p. 20) is a violation of the rule that due process is a matter of substance, not form, because the petitioner had perfected an appeal in time.

But the Appellate Division did review the proceedings for the respondent, to find that there had been a hearing which cured the lack of due process (p. 20), and found that the suspension was justified by four previous illegal suspensions (p. 21), which had neither been mentioned in the notice nor mentioned or offered in evidence at the hearing.

**The Notice of Suspension Was Insufficient.**

In *Cresse* v. *Parksekian*, 43 N. J. 326 (1964), the Court affirmed a reversal by the Appellate Division of the suspension by the Director of Motor Vehicles, because there had been insufficient notice and directed:

> "an individual hearing in the manner called for by the Appellate Division (81 N. J. Super. at p. 594)."

The notice in the present case stated:

> "PERSISTENT VIOLATOR—You have again been convicted after restoration with distinct understanding.
>
> Subsequent conviction in the New York Court as a result of a Failure to keep right violation on October 25, 1965.
>
> PERIOD OF SUSPENSION: Effective July 2, 1966 and 3 MONTHS from the date your driver license is received at this office."

The petitioner went to the hearing prepared to explain only the New York violation, to obtain his license during the appeal. The Appellate Division nevertheless found (p. 21) that the suspension was justified because of four prior equally illegal summary suspensions, none of which

was stated as grounds for the suspension in the notice and none of which was mentioned or offered in evidence at the hearing.

**A "Due Process" Hearing on Proper Notice Would Show Continuous Arbitrary Action for Minor Violations.**

A hearing on proper notice of all prior summary suspensions relied upon by the Appellate Division would show that:

Each had been preceded by a due process trial in which the State, under NJS 39:5-31, had an opportunity to seek suspension, if warranted by the evidence, as well as other punishment. In the four cases, the Court found suspension warranted only in the third case, and for thirty days.

On the first conviction of speeding, the Division of Motor Vehicles thereafter suspended for six months, and after the six months expired the conviction was reversed in the Appellate Division, *State* v. *Ring,* 85 N. J. Super. 341 (1964), and the charge subsequently dismissed. Petitioner was thus illegally deprived of six months' wages with no compensation. Since there should have been no suspension on August 29, 1963, there should have been no "restoration after suspension" to put the point rule in operation on February 29, 1964.

Yet that "restoration date" started a chain reaction of summary suspensions and restoration dates which has kept the point rule in continuous operation to date.

Otherwise, there would have been four simple violations, three in New Jersey and one in New York, which had been amply punished by the Courts. On the three convictions in New Jersey, the Division of Motor Vehicles subsequently arbitrarily and without hearing suspended three months, one month and six months respectively, which together with the three months on the present suspension and six months on the reversed conviction totals eighteen months

out of thirty-six months between August, 1963 and August, 1966.

There will be a restoration date sometime late in 1967 or early in 1968 following the remaining six weeks of suspension, which will put the point rule in operation against the petitioner for another year, until sometime in 1969.

A $10 technical violation in New York is not sufficient reason to classify the petitioner separate and apart from other New Jersey licensees, to make him subject to summary suspension three or four years later, and to do so violates the equal protection clause.

**The Point Rule Is Invalid on Its Face.**

The Appellate Division held that the point rule is a *reasonable* exercise of the power vested in the Division of Motor Vehicles under NJS 39:5-30 and 32.

Section 39:5-30 provides that it may be revoked by the Director of Motor Vehicles:

> "for a violation of any provision of this sub-title or on *any other reasonable* grounds after due notice in writing of such proposed suspension or revocation and the ground thereof."

This Court held seventy-five years ago that a statute giving a state commission power to establish *reasonable* rates without a hearing was void because:

> "the element of *reasonableness* both as regards the company and as regards the public is a question for judicial investigation requiring due process,"

*Chicago M. St. Paul Ry.* v. *Minnesota,* 134 U. S. 418, 10 S. C. Rep. 462-467.

Hence a rule as broad as, and founded on, such statute is equally invalid. *Morgan* v. *United States* (1938), 304 U. S. 1, 58 S. C. Rep. 773.

Section 32 merely provides that after suspension a license can be restored. The Appellate Division justified the suspension on the ground that the restoration was on condition (p. 22):

> "that if you are again convicted for a violation, your driver's license will be suspended forthwith."

Whether or not the Division of Motor Vehicles can issue conditional licenses, no such condition can deprive the licensee of constitutional due process without a prior hearing unless there is imminent danger.

## Double Jeopardy

The point rule, based on NJS 39:5-30, merely provides additional arbitrary punishment for past convictions regardless of the circumstances.

The New Jersey Supreme Court held in *Cresse* v. *Parsekian* (*supra*) that while license suspensions are designed mainly to protect the public by removing offenders (p. 328):

> "they undoubtedly have punitive incidents."

In that case, there had been no prior conviction under NJS.39:5-31 on the violation (39:4-144) on which the suspension was based, and hence no question of double jeopardy.

In this case, the opinion held that the petitioner (p. 23):

> "is bound by the record of conviction under the point system."

Under the doctrine of double jeopardy, the State is also bound. With respect to each prior conviction the State had an opportunity to seek as additional punishment a suspension under NJS 39:5-31. If the State failed to seek it or

was unsuccessful in obtaining it, the State is also bound by the conviction.

Section 39:5-30 cannot be construed to mean that the State can have a second free chance to suspend without a hearing merely because of former convictions, if at the trials which resulted in the convictions, the State, under Section 39:5-31, failed to seek a suspension or failed to prove that a suspension was warranted.

In this case, the "quasi crime" was committed in New York and punished in New York. To punish again in New Jersey solely for the New York conviction is clearly double jeopardy.

It is believed that the Fifth Amendment double jeopardy clause applies to the states under the Fourteenth Amendment in view of recent decisions. This has been so held by the Supreme Court of New Jersey in *State* v. *Farmer* (1966), 48 N. J. 145, page 168.

### Judgment and Record

The only judgment under the New Jersey procedure is the opinion of the Appellate Division ,which holds that the suspension order is affirmed. (p. 24).

Nine copies of the petitioner's brief, including appendix record and reply brief will be submitted with this petition.

## CONCLUSION

**For the foregoing reasons, petitioner prays that this writ of certiorari be granted.**

Respectfully submitted,

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## APPENDIX

### Opinion of the Appellate Division

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

A-1191-65

JOHN E. RING,

Appellant,

*vs.*

JUNE STRELECKI, Director of Motor Vehicles, and STATE OF NEW JERSEY,

Respondents.

Argued February 14, 1967—Decided March 8, 1967.

Before Judges Goldmann, Kilkenny and Collester.

On appeal from decision of Director of Motor Vehicles.

*Mr. Carl E. Ring* argued the cause for appellant.

*Mr. Jeffrey R. Lowe,* Deputy Attorney General, argued the cause for respondents (*Mr. Arthur J. Sills,* Attorney General of New Jersey, attorney).

PER CURIAM

On June 27, 1966 the Director of the Division of Motor Vehicles summarily suspended the driving privileges of John E. Ring for three months, effective July 2, 1966, stating as the reason in the notice of suspension:

> "PERSISTENT VIOLATOR—You have again been convicted after restoration with distinct understanding.

> Subsequent conviction in the New York Court as a result of a failure to keep right violation on October 25, 1965."

Ring appealed to the Appellate Division from that suspension order pursuant to *R.R.* 4:88-8. His notice of appeal, dated July 22, 1966, was filed on July 25, 1966.

Ring earned his livelihood as a truckdriver and needed his driver's license to work. He consulted Senator Musto, who is also an attorney, so that he might not be deprived of his driver's license while challenging the order of suspension. It was, and still is, Ring's position that the suspension was improper because it was ordered without first giving him a hearing. The Senator conferred with the Assistant Director of the Division. Ring was advised to write a letter requesting a hearing, so that he could explain the circumstances surrounding the October 1965 violation in the State of New York. He did so on June 30, 1966 and a hearing was scheduled for July 27, 1966. Ring was so notified by letter of July 21, 1966.

There was some misunderstanding as to whether Ring might drive a motor vehicle pending the hearing. Ring understood from his conversation with the Senator, following the latter's conference with the Assistant Director, that he might do so. There is implicit in a letter which the Assistant Director wrote to Ring on July 20, 1966 that such an assurance had been given. Thus the Assistant Director wrote, *inter alia*:

> "Senator Musto assumed that this [the request for a hearing] meant that you could continue to operate a motor vehicle until such time a hearing could be scheduled and so advised you. I assumed that there was sufficient time left prior to date of your suspension for this Division to schedule the hearing and so advise you.

It appears that this misunderstanding has placed you in an embarrassing position in that you were charged with 'Driving on the Revoke List'. It is suggested that you present this letter to the Magistrate so that he may know the true facts surrounding the situation.

I am sincerely sorry that this misunderstanding did occur."

Because of that misunderstanding and assuming that he might still exercise his driving privileges pending the hearing, Ring drove a truck on July 9, 1966 in Rutherford, New Jersey, and was arrested for driving while on the list of suspended drivers. Trial of the municipal court action has been postponed pending the determination of this appeal.

The hearing in the Division was conducted as scheduled on July 27, 1966. Ring's attorney attended and presented a lengthy affidavit in which Ring set forth in detail his position, including his explanation of the New York incident. He had driven his truck from the right eastbound lane into the left eastbound lane because he intended to make a left turn at the intersection and deemed his driving maneuver compatible with safe driving. He had pleaded guilty and paid a $10 fine. (He now states in his brief that he paid the fine "because to contest the ticket with a lawyer would cost in excess of $100.") He further alleged that he had driven several thousand miles during the eight months between the New York incident and the date of the suspension order without causing an accident and without having caused personal injury or property damage to anyone. He urged that "the violation in New York October 25, 1965 was not such as would warrant any suspension."

The record does not show any objection by Ring to the administrative hearing and, of course, he requested and

participated in the hearing by offering the statement referred to above. He did aver in that statement:

> "'I am attending this hearing July 27 to reduce the suspension and regain my license without waiving my claim that the suspension order was void. For the same reason I, in good faith, retained my license and surrender it herewith without waiving right of appeal."

On September 8, 1966 the Division of Motor Vehicles notified Ring that, "after careful consideration of all factors developed during the course of the hearing," his application for a reduction of the period of suspension had been denied.

Ring filed no notice of appeal from the order made by the Division of Motor Vehicles on September 8, 1966, following the hearing. The only notice of appeal filed by him was that of July 25, 1966, which was addressed solely to the summary suspension order of June 27, 1966. Ring claimed that order was invalid because no hearing had been accorded him before it was made. Therefore, the only appeal properly before us is that relating to the June 27, 1966 order which was issued without a hearing. In a supplemental memorandum filed by Ring subsequent to oral argument, he concedes this.

If the failure to conduct a hearing before issuing the June 27, 1966 order made it fatally defective, that would have some relevancy in the pending municipal court action. However, any such deficiency would not alter the fact that Ring was ultimately given a hearing requested by him and on the basis of that hearing an order was made on September 8, 1966, confirming the three months' suspension of driving privileges and Ring has not appealed from that order.

Ring now argues that the Division of Motor Vehicles was without jurisdiction to conduct a hearing because of the pendency of his appeal in the Appellate Division. There are two answers to this argument. First, the record is barren of any recital that Ring objected to the hearing before the Division on this ground. Secondly, he participated in the hearing on the merits of the case through his attorney, after having expressly requested it. He advanced, as he believed, valid reasons why the New York violation did not warrant the suspension. He requested a reduction of the suspension period. Ring cannot now be heard to say that his driving privileges were suspended by the Division of Motor Vehicles without a hearing. He had a hearing. And his failure to appeal from the order based thereon precludes any challenge to the propriety thereof.

Moreover, there was sufficient substantial evidence to support the actions taken by the administrative agency. As to the June 27, 1966 summary order of suspension, Ring's driving record justifies the reference to him as a "persistent violator." His driver's license had been suspended on August 29, 1963 as a persistent violator under the "point system." It was restored on February 29, 1964. Within three months thereafter, on May 25, 1964, he was convicted of careless driving in Rutherford. On September 3, 1964 he was found guilty of speeding in Clifton, New Jersey. On September 28, 1964 his driver's license was suspended by the Division of Motor Vehicles for three months for the careless driving in Rutherford and for an additional month for the speeding in Clifton. On October 7, 1964 he was convicted of driving while on the suspended list. This resulted in a further six months' suspension.

On July 30, 1965, after this cumulative 10-months' suspension had elapsed, Ring's driver's license was restored

to him "with the distinct understanding that if you are again convicted for a violation, your driver license privilege will be suspended forthwith." Within three months of the restoration, the New York violation occurred. On the basis of this conviction, the Division's "point system" regulations, providing restoration subject to suspension forthwith for a new violation, became operative. Such regulations are not an unreasonable exercise of the power vested in the Division of Motor Vehicles. *N.J.S.A.* 39:5-30 and 32. The particular regulation provides:

> "Restoration after suspension or official warning * * * shall be with the express condition and understanding that conviction of any violation of the motor vehicle laws of New Jersey or other states within a period of one year thereof may result in summary suspension of driving privileges, without hearing, for the following periods:
>
> (a) When the violation occurred within six months of the date of action—three months."

When the new violation occurs after six months but within nine months, the period of suspension is two months; and when after nine months but within one year, one month.

Such a conditional restoration, subject to summary suspension for the prescribed limited period for a new violation occurring shortly after restoration, is not an unreasonable exercise of the administrative function. The "point system" is a serious, intelligent and constructive attempt to promote traffic safety in this state. *District of Columbia* v. *Jones,* 183 A.2*d* 391 (*D. C. Mun. Ct. App.* 1962). Ring's guilty plea to the New York violation within three months of the restoration of his driver's license made the "point system" regulation applicable.

Due process does not necessarily require in every instance a hearing before action taken by an administrative agency. It is enough if hearing is afforded within a reasonable time after action taken. 1 *Cooper, State Administrative Law* (1965), *C. I.* § 2, *p.* 139 and § 4, *p.* 143. Where, in the administrative agency's judgment, the protection of the public requires the immediate cessation of activities under the license, the agency should have and exercise the power to order "summary *suspension* of the license pending an opportunity to the licensee to be heard on the question whether his authority should be permanently *revoked.*" *Gellhorn and Byse, Administrative Law—Cases and Comments, pp.* 764-765; *Bechler* v. *Parsekian,* 36 *N. J.* 242, 257 (1961). Ring was certainly given due notice, when his driver's license was restored, that his driving privilege would be *suspended* forthwith upon conviction of a new violation. He knew of that condition when he pleaded guilty to the New York violation. He is bound by the record of conviction under the "point system". *Tichenor* v. *Magee,* 4 *N. J. Super.* 467 (App. Div. 1949). Moreover, he was given a hearing within one month of the summary suspension to show, if he could, why the period of suspension was not warranted. We find no basis for disturbing the administrative findings.

We are not required by this appeal to decide whether Ring violated the law on July 9, 1966 when he drove a truck in Rutherford. It seems clear that he was of the honest belief that the Assistant Director of Motor Vehicles had authorized his continuing to drive pending the hearing to be held. The Assistant Director's letter of July 20, 1966 frankly admits the "misunderstanding" which his conversation with the Senator had generated. His suggestion that Ring present his letter to the municipal magistrate—"so that he may know the true facts surrounding the situation"—implies that Ring ought not to be sub-

jected to any penalty by reason of the July 9th incident. A dismissal of that complaint, while not directed by us, would appear to be warranted in the interest of substantial justice.

We are not unmindful of the substantial financial loss suffered by a truckdriver in having his driving privileges suspended. We note a bill pending in the Legislature, A-263, which would limit the suspension to non-occupational driving.

The order under review is affirmed.